IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

NOTICE OF MOTION NO.2011 OF 2003
IN
SUIT NO.1653 OF 1977

Peter Misquitta & Ors. ..Plaintiffs.
Vs.
Heather D'Mello & Ors. ..Defendants.

....

Mr. Anoop Sharma i/b S.M. Kazi for the Plaintiffs.
Ms. Prachi Tatake h/f Mr A.R. Sugdare for Defendant No.6.

...

CORAM : DR.D.Y.CHANDRACHUD, J.

26th August, 2005.

P.C.:

This is a Motion for the restoration of a suit which was dismissed in default on 26th June, 2003. In paragraph 9 of the affidavit in support it has been stated that the advocate appearing on behalf of the Plaintiff was engaged before another Court and was unable to remain present when the matter was called out. The matter was mentioned before the Court on the next day, but it has been stated that the Plaintiff was called upon to adopt appropriate

proceedings. The Motion was not seriously opposed. Counsel appearing for the Defendants states that the suit was dismissed in default on a previous occasion as well and was then restored. In the circumstances, the Notice of Motion is made absolute in terms of prayer clause (a). However, in the interest of justice, the Plaintiff, in my view, should be directed to pay costs of this Motion which shall in the circumstances be quantified at Rs.5,000/-. The costs should be paid within a period of two weeks and shall be a condition precedent.